

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Applications of AT&T Inc. and Deutsche Telekom AG)	WT Docket No. 11-65
)	
For Consent to Transfer Control of Licenses and Authorizations)	
)	
)	
In the Matter of)	
)	
AT&T Mobility Spectrum LLC and Qualcomm Incorporated Seek FCC Consent to the Assignment of Lower 700 MHz Band Licenses)	WT Docket No. 11-18 DA 11-252 ULS File No. 0004566825

**OPPOSITION OF DEUTSCHE TELEKOM
TO REQUESTS TO CONSOLIDATE PROCEEDINGS**

Deutsche Telekom AG (“Deutsche Telekom”) hereby opposes the Joint Motion to Consolidate the two above-captioned proceedings, filed by Cincinnati Bell Wireless, LLC, MetroPCS Communications, Inc., NTELOS, the Rural Cellular Association, the Rural Telecommunications Group, and Sprint Nextel Corporation (collectively, “Joint Parties”),¹ as well as a similar request made by Free Press, Media Access Project, Public Knowledge, Consumers Union and the Open Technology Initiative of the New America Foundation (collectively, “Public Interest Organizations”).² The two identified proceedings concern two entirely distinct transactions, with different parties, different

¹ Cincinnati Bell Wireless *et al.*, Joint Motion to Consolidate, WT Docket Nos. 11-18 & 11-65 (April 27, 2011) (“*Joint Motion to Consolidate*”).

² Free Press *et al.*, Notice of Ex Parte Presentation, WT Docket Nos. 11-18 & 11-65 (April 27, 2011).

terms, different agreements and different public interest showings. They are not mutually exclusive or contingent in any way. There is no basis in law or policy for consolidating them.

WT Docket 11-65 concerns applications filed by Deutsche Telekom and AT&T Inc. (“AT&T”) for the transfer of FCC licenses and authorizations held by T-Mobile USA, Inc. and its subsidiaries to AT&T. WT Docket 11-18 concerns license transfers associated with an entirely separate transaction – the assignment of Qualcomm Incorporated’s lower 700 MHz band licenses to a subsidiary of AT&T. Deutsche Telekom is a party only to the first proceeding. It has no role or interest in the second one. The transfer of FCC licenses from Deutsche Telekom to AT&T is not mutually exclusive with the Qualcomm transaction, nor contingent on it in any way. Indeed, the agreement underlying the proposed transaction between Deutsche Telekom and AT&T does not even mention the Qualcomm transaction. In such circumstances, there is no basis for consolidating the two proceedings.

The Commission has consistently denied requests to consolidate its review of separate transactions, even where the two transactions may have a common party.³ In denying one such request, the Chief of the Wireless Telecommunications Bureau explained that “[i]n the past, the Commission has denied requests for consolidation when

³ See, e.g., *Applications Filed for the Acquisition of Certain Assets of Cimco Communications, Inc., by Comcast Phone LLC, Comcast Phone of Michigan, LLC and Comcast Business Communications*, Memorandum Opinion and Order and Order on Reconsideration, 25 FCC Rcd 3401, ¶8 n.16 (2010); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 9816, ¶179 (2000); *Applications of Motorola, Inc. for Consent to Assign 800 MHz Licenses to Nextel Communications, Inc.*, Order, 10 FCC Rcd 7783, ¶12 (1995); *Applications of Nextel Communications, Inc., for Transfer of Control of OneComm Corporation, N.A. and C-Call Corp.*, Order, 10 FCC Rcd 3361, ¶¶16-20 (1995).

the business transactions involved are independent, and neither is conditioned on the consummation of the other.”⁴ The Order elaborated further that

OneComm and Motorola, the two applicants involved here, are distinct entities. They both happen to have entered into agreements with the same party, Nextel, but the agreements involve different business terms, are structured differently, and are neither interrelated nor dependent on one another. We believe it would not serve the public interest to delay consummation of the OneComm transaction simply because Motorola also requested permission to transfer licenses to Nextel four months later.⁵

Based on that analysis, the Bureau denied the request to consolidate proceedings in that case. The agency must follow precedent and do the same thing here.⁶

While the Joint Parties and Public Interest Organizations attempt to argue that consolidation of these proceedings is necessary so that the Commission can consider the two transactions in combination, this argument is unavailing as such consideration will occur naturally through sequential review of the transactions. If the Commission grants the transfer of the Qualcomm licenses to AT&T, it will consider the later-filed applications for AT&T’s acquisition of the T-Mobile licenses from Deutsche Telekom against that background. Indeed, the spectrum aggregation and competitor charts submitted with the AT&T/Deutsche Telekom applications assumed the grant of the pending AT&T/Qualcomm licenses and included those licenses in AT&T’s spectrum

⁴ *Applications of Nextel Communications, Inc., for Transfer of Control of OneComm Corporation, N.A. and C-Call Corp.*, Order, 10 FCC Rcd 3361, ¶17 (1995).

⁵ *Id.* at ¶18.

⁶ As grounds for granting their motion, the Joint Parties cite just one FCC decision, which references the consolidation of proceedings involving the transfer of broadcast licenses and the renewals of some of the licenses being transferred. *Joint Motion to Consolidate* at n.6. However, that case is wholly inapposite to the instant situation and does not provide a basis for consolidation here. As made clear in that decision, the Commission consolidated the proceedings because the only issues remaining in the renewal proceedings were those involving waivers at issue in the transfer proceeding. *Shareholders of Tribune Company, Transferors and Sam Zell, et al., Transferees; for Consent to the Transfer of Control of The Tribune Company and Applications for the Renewal of License of KTLA(TV), Los Angeles, California, et al.*, Memorandum Opinion and Order, 22 FCC Rcd 21266, ¶2 (2007). Here, there is no such match up of issues; the two proposed transactions involve different parties, different agreements, and different licenses.

holdings.⁷ Accordingly, this argument does not provide any basis for consolidation of the proceedings.

For the foregoing reasons, the Joint Parties and Public Interest Organizations have failed to articulate good cause for consolidating the above-captioned proceedings. The Commission should follow its precedent and deny their request.

Respectfully submitted,

DEUTSCHE TELEKOM AG

By: /s/ Nancy J. Victory
Nancy J. Victory
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-7344

Its Attorney

May 4, 2011

⁷ See ULS File No. 0004669383 at Appendix A & B.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May, 2011, I caused true and correct copies of the foregoing Opposition of Deutsche Telekom to Requests to Consolidate Proceedings to be mailed by first class U.S. mail to:

Michael S. Vanderwoude
Vice President and General Manager
Cincinnati Bell Wireless, LLC
221 E. Fourth Street
Cincinnati, OH 45202

Mark A. Stachiw
Executive Vice President, General Counsel
& Secretary
MetroPCS Communications, Inc.
2250 Lakeside Boulevard
Richardson, TX 75082

Mary McDermott
Senior Vice President – Legal and
Regulatory Affairs
NTELOS
401 Spring Lane
Waynesboro, VA 22980

Matthew A. Brill
James H. Barker
Alexander Maltas
Latham & Watkins LLP
555 Eleventh St., N.W., Suite 1000
Washington, DC 20004
Counsel for Rural Cellular Association

Caressa D. Bennet
Michael R. Bennet
Daryl A. Zakov
Bennet & Bennet, PLLC
4350 East West Highway, Suite 201
Bethesda, MD 20814
*Counsel for Rural Telecommunications
Group*

Lawrence R. Krevor
Vice President, Legal and Government
Affairs – Spectrum
Trey Hanbury
Director, Legal and Government Affairs –
Spectrum Proceedings
12502 Sunrise Valley Drive
Reston, VA 20196

M. Chris Riley
Counsel
Free Press
501 Third Street N.W., Suite 875
Washington, DC 20001

Parul P. Desai
Consumers Union
1101 17th Street, N.W., Suite 500
Washington, DC 20036

Matthew F. Wood
Andrew Jay Schwartzman
Media Access Project
1625 K Street, N.W., Suite 1000
Washington, DC 20006

Michael Calabrese
Sascha Meinrath
Open Technology Initiative of the New
America Foundation
1899 L Street, N.W., Suite 400
Washington, DC 20036

Harold J. Feld
John Bergmayer
Public Knowledge
1818 N Street, N.W., Suite 410
Washington, DC 20036

Additionally, I caused true and correct copies of the foregoing Opposition of Deutsche Telekom to Requests to Consolidate Proceedings to be mailed by electronic mail to:

Peter J. Schildkraut
Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, DC 20004
*Counsel for AT&T Inc. and AT&T
Mobility Spectrum LLC*

Paul Margie
Wiltshire & Grannis LLP
1200 18th Street, N.W.
Washington, DC 20036
Counsel for QUALCOMM Incorporated

Kathy Harris
Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission
Kathy.harris@fcc.gov

Kate Matraves
Spectrum and Competition Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
Catherine.matraves@fcc.gov

David Krech
Policy Division
International Bureau
Federal Communications Commission
David.krech@fcc.gov

Jim Bird
Office of General Counsel
Federal Communications Commission
Jim.bird@fcc.gov

Best Copy and Printing, Inc.
FCC@BCPIWEB.COM

/s/ Nancy J. Victory
Nancy J. Victory